

ENTERED

November 06, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

JOSE ASCENCIO SOTO-RAMIREZ §
§
Petitioner §
VS. § CIVIL ACTION NO. 5:19-CV-00012
§
UNITED STATES OF AMERICA §

ORDER

Petitioner filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, (Dkt. No. 1), which the undersigned referred to U.S. Magistrate Judge John A. Kazen for findings and recommendations, (Dkt. No. 3). The Government filed a response to Petitioner's motion on August 26, 2019, (Dkt. No. 16), and Petitioner chose not to file a reply. Instead, Petitioner sought to appeal the Government's response to the Fifth Circuit Court of Appeals, (Dkt. No. 17), and moved for leave to prosecute the appeal *in forma pauperis*, (Dkt. No. 18).

On October 7, 2019, Magistrate Judge Kazen issued a Report and Recommendation on Petitioner's request for a certificate of appealability. (Dkt. No. 19). The Magistrate Judge recommended that, because the Government's response to the § 2255 motion was not a final, appealable order, Petitioner's request should be denied. (*Id.*). Petitioner did not file any objections. On November 4, 2019, the Fifth Circuit dismissed Petitioner's appeal, concluding that the "government's response is not a final or otherwise appealable order." (Dkt. No. 22).

Accordingly, the undersigned **ADOPTS** Magistrate Judge Kazen's Report and

Recommendation, (Dkt. No. 19), as the opinion of the Court. Petitioner's motions for a certificate of appealability, (Dkt. No. 17), and for leave to prosecute his appeal *in forma pauperis*, (Dkt. No. 18), are **DENIED**.

Petitioner's § 2255 motion, (Dkt. No. 1), remains pending and under advisement before Magistrate Judge Kazen.

It is so **ORDERED**.

SIGNED November 6, 2019.



Marina Garcia Marmolejo
United States District Judge